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PDAC  
Atty Dkt No. 1300-0008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

John J. QUINN et al.

Confirmation No.: 6795

Serial No.: 10/666,744

Group Art Unit: 1645

Filing Date: September 15, 2003

Examiner: Unassigned

Title: METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS

**RESPONSE TO NOTICE TO FILE MISSING PARTS  
AND PETITION UNDER 37 C.F.R. §1.47(a)**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

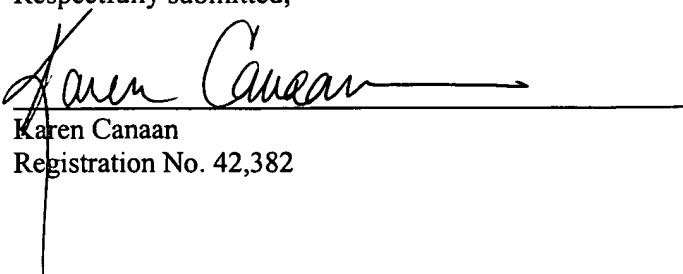
In response to the Notice to File Missing Parts dated January 2, 2004, transmitted herewith for filing are the following documents:

1. A Petition under 37 C.F.R. §1.47(a) to File on Behalf of an Inventor who Refuses to Sign or Cannot be Reached;
2. Declaration of Karen Canaan in Support of the Petition under 37 C.F.R. §1.47(a);
3. Declaration of Mary O'Malley in Support of the Petition under 37 C.F.R. §1.47(a) with Exhibits A and B;
4. A copy of the Notice to File Missing Parts;
5. A Combined Declaration and Power of Attorney signed by two of the three inventors;
6. An Assignment and Assignment Recordation Cover Sheet;
7. Petition for Extension of Time (One month); and
8. A check in the amount of \$1446.00 to cover the required fees (petition fee, \$130.00, surcharge, \$130.00; one-month extension of time, \$110.00, statutory basic filing fee, \$770.00, and additional claim fees, \$306.00).

The Commissioner is hereby authorized to charge any additional fees under 37 CFR §§ 1.16, 1.17 and 1.21 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 18-0580.

Respectfully submitted,

By:

  
Karen Canaan  
Registration No. 42,382

REED & EBERLE LLP  
800 Menlo Avenue, Suite 210  
Menlo Park, California 94025  
(650) 330-0900 Telephone  
(650) 330-0980 Facsimile



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

John J. QUINN et al.

Confirmation No.: 6795

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Title: METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS

**PETITION UNDER 37 C.F.R. § 1.47(a)****Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 1.47(a), inventors John J. Quinn and Brian D. Warner (hereinafter "petitioners") petition the Commissioner for permission to prosecute this patent application without the signature of non-signing inventor John Weare. The facts in support of this petition are set forth in the attached Declarations of Karen Canaan and Mary O'Malley. Karen Canaan is the attorney of record for this application and Mary O'Malley is the patent administrator at Reed & Eberle LLP that was assigned to prepare the formal papers required for preparing the response to the Notice to File Missing Parts for this application.

The Declaration of Karen Canaan demonstrates that diligent efforts were made to find out the last known address of inventor John Weare and that such diligent efforts included contacting John Weare's former employer as well as the other inventors for this application in order to find John Weare's current address. After attempts to find a new address for John Weare, the formal application papers were forwarded to John Weare at his last known address.

The Declaration of Mary O'Malley ("Declaration") demonstrates that the Combined Declaration and Power of Attorney and the Assignment required for response to the Notice to File Missing Parts for

this matter were forwarded to John Weare at his last known address via Federal Express and that that the Federal Express package was returned to Reed & Eberle as undeliverable after three attempts.

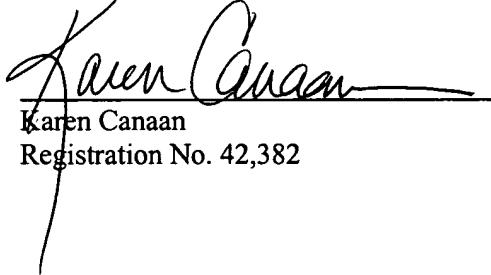
Because the Declarations of Karen Canaan and Mary O'Malley demonstrate that John Weare could not be located after diligent attempts, petitioners respectfully request that the Office accept the formal application papers submitted in response to the Notice to File Missing Parts without the signature of John Weare.

Should the Office have any questions regarding this petition that may be addressed by way of a telephone call or e-mail correspondence, petitioners respectfully request that the Office contact the undersigned attorney at 650-330-4913 or at canaan@reedpatent.com.

This petition is also accompanied by the \$130.00 fee set forth in 37 C.F.R. § 1.17(h).

Respectfully submitted,

By:



Karen Canaan

Karen Canaan  
Registration No. 42,382

REED & EBERLE LLP  
800 Menlo Avenue, Suite 210  
Menlo Park, California 94025  
(650) 330-0900 Telephone  
(650) 330-0980 Facsimile



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

John J. QUINN et al.

Confirmation No.: 6795

Serial No.: 10/666,744

Group Art Unit: 1645

Filing Date: September 15, 2003

Examiner: Unassigned

Title: METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS

**DECLARATION OF KAREN CANAAN  
IN SUPPORT OF THE PETITION UNDER 37 C.F.R. § 1.47(a)**

**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I, Karen Canaan, declare that I have first hand knowledge of the following facts:

1. I am a registered patent attorney employed at the law firm of Reed & Eberle LLP and an attorney of record for the instant application. The instant application is on my docket, and thus, I am responsible for the prosecution of this application before the United States Patent and Trademark Office ("Office")
2. On January 7, 2004, a Notice to File Missing Parts, dated January 2, 2004, was received at Reed & Eberle LLP for the instant application.
3. On January 8, 2004, Margaret K. Surridge, my patent secretary, prepared a Combined Declaration and Power of Attorney and an Assignment (hereinafter referred to as "formal application papers") for the instant application and forwarded the formal application papers to Bayer Corporation, the assignee of this application, with a request that Bayer forward the formal application papers to the inventors for their signature.
4. On February 6, 2004, the letter of January 8, 2004, was stamped with a "Reminder" notation and was re-sent to Bayer via facsimile transmission with an indication that a response to the Notice to File Missing Parts is due on March 2, 2004. The facsimile cover page was returned from Bayer on the same

date, i.e., February 6, 2004, with a handwritten note indicating that Bayer was working to procure the signatures on the formal application papers.

5. On February 13, 2004, Reed & Eberle LLP received the formal application papers from Bayer with the signatures of John J. Quinn and Brian Warner but lacking a signature from John Weare.

6. On February 16, 2004, Margaret Surridge began maternity leave and Mary O'Malley became my patent secretary.

7. On or about February 23, 2004, I contacted Bayer to inquire about John Weare's whereabouts and was informed by Pam Bailey, the Bayer paralegal assigned to manage this patent application, that John Weare had left Bayer and he had not left a forwarding address. On this same date, I contacted Bayer human resources department to inquire if they had a forwarding address for John Weare and I was informed that they would not release that information to me because I was not a Bayer employee. Also on this same date, I conducted an extensive internet search attempting to locate the whereabouts of John Weare and all of my attempts only yielded John Weare's El Sobrante, California address.

8. On or about February 27, 2004, I contacted inventor Brian Warner to inquire if he was aware of John Weare's whereabouts; he told me he was not but that he would contact human resources to find out. On this same date, Brian Warner received an e-mail from Bayer human resources indicating that they did not have a forwarding address for John Weare. The note from human resources indicated that Bayer had "heard" that John Weare had moved to New York but no address was provided.

9. In response to the rumor of John Weare's move to New York, I conducted another extensive internet search to try to locate John Weare in New York, but the search produced no results.

10. After consulting the regulations set forth at 37 C.F.R. § 1.47(a) with regard to non-signing inventors that cannot be reached, I instructed my secretary to prepare a package enclosing the formal application papers required for response to the Notice to File Missing Parts to John Weare's last known address in El Sobrante, California. On March 5, 2004, Mary O'Malley brought the package to me enclosing the formal application papers to be sent to John Weare and I prepared a cover letter to accompany the papers with instructions for Mr. Weare to follow when reviewing the enclosures. I was informed by Mary O'Malley on the evening of March 5, 2004, that the formal application papers had been sent out with Federal Express earlier that afternoon.

11. On March 16, 2004, Mary O'Malley informed me that the Federal Express package sent to John Weare had been returned unopened as undeliverable.

12. On March 31, 2004, I prepared this Declaration and the petition it is attached to. I also instructed my secretary Mary O'Malley to prepare a Declaration for attachment to the petition outlining her first hand knowledge of the facts relating to her preparation of the formal application papers that were

forwarded to John Weare via Federal Express and her receipt of the Federal Express package as undeliverable.

11. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated:

April 1, 2004

By:

Karen Canaan

Karen Canaan  
Registration No. 42,382  
Reed & Eberle LLP



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:  
John J. QUINN et al.

Confirmation No.: 6795

Serial No.: 10/666,744

Group Art Unit: 1645

Filing Date: September 15, 2003

Examiner: Unassigned

Title: METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS

**DECLARATION OF MARY O'MALLEY  
IN SUPPORT OF THE PETITION UNDER 37 C.F.R. § 1.47(a)**

**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I, Mary O'Malley, declare that I have first-hand knowledge of the following facts:

1. I am a Patent Administrator for Reed & Eberle LLP. As part of my duties at Reed & Eberle LLP, I assist attorney Karen Canaan in the prosecution of various matters. The instant application is among the patent applications that I have been working on with Karen Canaan.
2. On January 7, 2004, a Notice to File Missing Parts, dated January 2, 2004, was received at Reed & Eberle LLP for the instant application.
3. On January 8, 2004, Margaret K. Surridge, patent secretary to Karen Canaan prepared a Combined Declaration and Power of Attorney and an Assignment (hereinafter referred to as "formal application papers") for the instant application and forwarded the formal application papers to Bayer Corporation, the assignee of this application, with a request that Bayer forward the formal application papers to the inventors for their signature.
4. On February 6, 2004, the letter of January 8, 2004, was stamped with a "Reminder" notation and was re-sent to Bayer via facsimile transmission with an indication that a response to the Notice to File Missing Parts is due on March 2, 2004. The facsimile cover page was returned from Bayer on the same

date, i.e., February 6, 2004, with a handwritten note indicating that Bayer was working to procure the signatures on the formal application papers.

5. On February 13, 2004, Reed & Eberle LLP received the formal application papers from Bayer with the signatures of John J. Quinn and Brian Warner but lacking a signature from John Weare. The formal application papers were accompanied by a letter from Bayer stating that Bayer was unable to locate the third inventor at his last known address of record: 4891 Buckboard Way, El Sobrante, California 94803.

6. On February 16, 2004, Margaret Surridge began maternity leave and I became Karen Canaan's patent secretary.

7. Over the next month, Karen Canaan kept me informed of her attempts to locate John Weare by way of internet searches and discussions with inventor Brian Warner and the human resources department at Bayer and the failure of all of these sources to yield a new address from John Weare.

8. On March 5, 2004, I placed the following documents in a Federal Express envelope (FedEx Airbill No. 838615386888) addressed to John Weare's last known address at 4891 Buckboard Way, El Sobrante, California 94803: (i) a cover letter written and signed by Karen Canaan requesting Mr. Weare's signature on the enclosed formal application papers; (ii) a copy of the instant application as it was filed on September 15, 2003; (iii) a Combined Declaration and Power of Attorney for John Weare's signature; (iv) an Assignment of the instant application to Bayer Corporation for John Weare's signature; and (v) a return, prepaid, Federal Express envelope. Copies of each of the documents set forth above are attached as Exhibit A.

9. On March 16, 2004, all of the documents listed above were returned to me unopened.

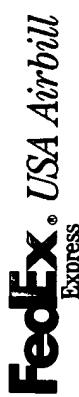
10. On or about March 30, 2004, I contacted Federal Express to inquire on the Federal Express procedures for non-delivery of documents and was directed to their website page, which provides the tracking history of the package. I visited and downloaded the website page documenting the tracking history for FedEx Airbill No. 838615386888 on March 30, 2004. A copy of the FedEx tracking history website page for FedEx Airbill No. 838615386888 is attached as Exhibit B. This tracking history page demonstrates that Federal Express attempted three times to deliver the package between March 6, 2004, and March 10, 2004, and that each attempt was unsuccessful. On March 15, 2004, Federal Express declared the package undeliverable and returned the package unopened to Reed & Eberle LLP.

11. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: April 1, 2004

By: Mary O'Malley  
Mary O'Malley  
Patent Administrator  
Reed & Eberle LLP



FedEx<sup>®</sup> USA Airbill  
Express

FedEx  
Tracking  
Number

Please print and press hard.

1 From

Sender's Name

FedEx Tracking Number

and press hard.

Date

3-5-04

Sender's FedEx  
Account Number

2350-4483-8

Sender's Name

Karen Canaan

Phone (650) 330-0900

Company

REED & EBERLE LLP

Address

800 MENLO AVE SITE 210

Dept/Rm/Floor/Suite/Rm

City

MENLO PARK

State

CA

ZIP

94025

OPTIONAL

2 Your Internal Billing Reference

For 2 characters will appear on invoice.

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Recipient's Name

John Weare

Phone ( )

Company

4891 Buckboard Way

We cannot deliver to P.O. Boxes or P.O. ZIP codes.

To HOLD<sup>®</sup> at FedEx location, print FedEx address.

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# REED & EBERLE LLP

DIANNE E. REED  
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KAREN CANAAN  
CARRIE A. BEATUS  
MARK L. WARZEL<sup>†</sup>  
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<sup>†</sup>PATENT AGENT  
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# COPY

PATENT PREPARATION,  
PROSECUTION, AND  
RELATED SERVICES

RECEIVED

MAR 16 2004

REED & EBERLE LLP

VIA FEDERAL EXPRESS

Mr. John Weare  
4891 Buckboard Way  
El Sobrante, California 94803

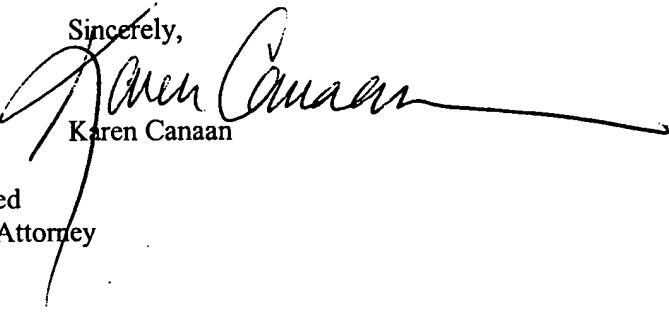
Re: U.S. Patent Application Serial No. 10/666,744  
For "METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID  
SEQUENCE VARIATIONS"  
By John J. Quinn, et al.  
Bayer Reference: MST-2358  
Our Reference: 1300-0008

Dear John:

Please find enclosed a copy of the patent application referenced above, as filed in the U.S. Patent and Trademark Office on September 15, 2003. Also enclosed are a Combined Declaration and Power of Attorney and an Assignment. Please sign the Declaration and Assignment as indicated and return them to me in the enclosed envelope.

The deadline for filing these documents with the U.S. Patent and Trademark Office is April 2, 2004. We would appreciate receipt of the executed documents by **Monday, March 22, 2004**. Please do not hesitate to contact me if you have any questions.

Sincerely,

  
Karen Canaan

KC/kmo

Enclosures (3): Copy of Application as filed  
Declaration and Power of Attorney  
Assignment

cc (w/out encls): Mark Seka, Esq.  
Ms. Pamela Bailey

# COPY

Atty Dkt. No. 1300-0008  
JOINT

## ASSIGNMENT

THIS ASSIGNMENT, by John J. Quinn; Brian D. Warner; and John Weare (hereinafter referred to as the assignors), residing at Concord, California; Martinez, California; and El Sobrante, California, respectively, witnesseth:

WHEREAS, the said assignors have invented certain new and useful improvements in METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS set forth in an application for Letters Patent of the United States, bearing Serial No. 10/666,744, filed on September 15, 2003, and which claims priority from Provisional Application Serial No. 60/412,477, filed on September 20, 2002; and

WHEREAS, Bayer HealthCare LLC, a corporation duly organized under and pursuant to the laws of Indiana, and having its principal place of business at 511 Benedict Avenue, Tarrytown, New York 10591-5097 (hereinafter referred to as the assignee) is desirous of acquiring the entire right, title and interest in and to said invention and said application for Letters Patent of the United States, and in and to any Letters Patent or Patents, United States or foreign, to be obtained therefor and thereon:

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and sufficient considerations, the receipt of which is hereby acknowledged, said assignors have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto the assignee, its successors, legal representatives and assigns, the entire right, title and interest in and to the above-mentioned invention, application for Letters Patent, and any and all Letters Patent or Patents in the United States of America and all foreign countries which may be granted therefor and thereon, and in and to any and all divisions, continuations, and continuations-in-part of said application, or reissues or extensions of said Letters Patent or Patents, and all rights under the International Convention for the Protection of Industrial Property, the same to be held and enjoyed by said assignee, for its own use and behoof and the use and behoof of its successors, legal representatives and assigns, to the full end of the term or terms for which Letters Patent or Patents may be granted, as fully and entirely as the same would have been held and enjoyed by the assignors, had this sale and assignment not been made.

AND for the same consideration, said assignors hereby covenant and agree to and with said assignee, its successors, legal representatives and assigns, that, at the time of execution and delivery of these presents, said assignors are the sole and lawful owners of the entire right, title

and interest in and to said invention and the application for Letters Patent above-mentioned, and that the same are unencumbered and that said assignors have good and full right and lawful authority to sell and convey the same in the manner herein set forth.

AND for the same consideration, said assignors hereby covenant and agree to and with said assignee, its successors, legal representatives and assigns, that said assignors will, whenever counsel of said assignee, or the counsel of its successors, legal representatives and assigns, shall advise that any proceeding in connection with said invention, or said application for Letters Patent, or any proceeding in connection with Letters Patent for said invention in any country, including interference proceedings, is lawful and desirable, or that any division, continuation or continuation-in-part of any application for Letters Patent or any reissue or extension of any Letters Patent, to be obtained thereon, is lawful and desirable, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of Letters Patent for said invention, without charge to said assignee, its successors, legal representatives and assigns, but at the cost and expense of said assignee, its successors, legal representatives and assigns.

AND said assignors hereby request the Commissioner of Patents to issue said Letters Patent of the United States to said assignee as the assignee of said invention and the Letters Patent to be issued thereon for the sole use and behoof of said assignee, its successors, legal representatives and assigns.

Date: \_\_\_\_\_

John J. Quinn

Date: \_\_\_\_\_

Brian D. Warner

Date: \_\_\_\_\_

John Weare

# COPY

Atty Dkt No. 1300-0008

## COMBINED DECLARATION AND POWER OF ATTORNEY FOR UTILITY PATENT APPLICATION

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled METHOD FOR DETECTION OF MULTIPLE NUCLEIC ACID SEQUENCE VARIATIONS, the specification of which

is attached hereto.

was filed on September 15, 2003, and assigned Serial No. 10/666,744.

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations §§ 1.56(a) and (b) which state:

"(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said application. This invention was not in public use or on sale in the United States of America more than one year prior to this application. This invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than one year prior to this application.

I hereby claim priority benefits under Title 35, United States Code § 119(e)(1) of any United States provisional application(s) for patent as indicated below. I hereby claim benefit under Title 35, United States Code § 120 of any United States Patent application(s) listed below and, insofar as the subject matter of each of the claims of this application are not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulation § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

Application No.	Date of Filing (day/month/year)	Priority Claimed
60/412,477	September 20, 2002	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Dianne E. Reed, Reg. No. 31,292  
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This appointment, including the right to delegate this appointment, shall also apply to the same extent to any proceedings established by the Patent Cooperation Treaty.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Sole or First Joint Inventor:

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